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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 THOMAS WILLIAM SINCLAIR RICHEY,

12 Petitioner,

13 v.

14 STEVEN SINCLAIR,

15 Respondent.
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Case No. C09-5164RJB-KLS

REPORT AND
RECOMMENDATION TO DENY
APPLICATION TO PROCEED
IN FORMA PAUPERIS

Noted for May 22, 2009

21 This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. §
22 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at the Stafford Creek Corrections Center,
23 located in Aberdeen, Washington. He has filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C.
24 § 2254 and an application to proceed *in forma pauperis*. (Dkt. #1-#2). Because petitioner appears to have
25 sufficient funds with which to pay the \$5.00 Court filing fee, the undersigned recommends the Court deny
26 the application.

27 DISCUSSION

28 The Court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper

1 affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the Court has broad discretion in denying an
2 application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), *cert. denied*,
3 375 U.S. 845 (1963).

4 Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when
5 a prisoner is able to pay the initial expenses required to commence a lawsuit. *See* Temple v. Ellerthorpe,
6 586 F.Supp. 848 (D.R.I. 1984); Braden v. Estelle, 428 F.Supp. 595 (S.D.Tex. 1977); U.S. ex rel. Irons v.
7 Com. of Pa., 407 F.Supp. 746 (M.D.Pa. 1976); Shimabuku v. Britton, 357 F.Supp. 825 (D.Kan. 1973),
8 *aff'd*, 503 F.2d 38 (10th Cir. 1974); Ward v. Werner, 61 F.R.D. 639 (M.D.Pa. 1974).

9 By requesting the Court to proceed *in forma pauperis*, petitioner is asking the government to incur
10 the filing fee because he allegedly is unable to afford the costs necessary to proceed with his petition for
11 *habeas corpus*. The record contains a prison trust account statement showing that for the months of April
12 2008, through September 2008, petitioner had average monthly receipts totaling \$116.46 and an average
13 spendable balance of \$53.28. (Dkt. #2). The record also contains a second prison trust account statement
14 showing that for the months of June 2008, through November 2008, he had average monthly receipts
15 totaling \$150.96 and an average spendable balance of \$116.10. Given the amount of funds petitioner
16 appears to have in his account, and that a prisoner's basic needs are provided for while incarcerated, and
17 in light of the minimal filing fee required to proceed with this action (\$5.00), it is not unreasonable to
18 expect petitioner to pay that fee from those funds.

19 CONCLUSION

20 Because it is reasonable to expect petitioner to incur the costs to proceed with his petition, the
21 undersigned recommends that the Court deny his application to proceed *in forma pauperis*. Accordingly,
22 the undersigned also recommends that the Court order petitioner to pay the required filing fee **within**
23 **thirty (30) days** of the Court's order.

24 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),
25 the parties shall have ten (10) days from service of this Report and Recommendation to file written
26 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
27 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit
28 imposed by Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **May 22, 2009**,

1 as noted in the caption.

2 Dated this 30th day of April 2009.

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5 Karen L. Strombom
6 United States Magistrate Judge
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